

have an administration that is arguing for 1 million solar panels and filibustering a savings account for everyday families—not rock stars, not wealthy folks—to set up a savings account to help their kids, kindergarten through high school, I don't know what better distinguishes our two objectives.

Mr. President, I have been very pleased with the bipartisan support of Senator TORRICELLI, Senator LIEBERMAN, Senator BREAUX, and others, and I hope we can end this filibuster and have a normal debate about our views on how to help education. But I find this to be a very telling comparison of our sets of priorities, with the filibustering of the savings account for average American families. We are proposing a \$2,000 tax credit that anybody can take advantage of. And you know exactly who is going to use that, and it is not going to be middle America, is it?

Mr. President, I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to H.R. 2646, the Education Savings Act for Public and Private Schools:

Trent Lott, Paul Coverdell, Craig Thomas, Rod Grams, Chuck Hagel, Tim Hutchinson, Kay Bailey Hutchison, Mike DeWine, Bob Bennett, John McCain, Don Nickles, Chuck Grassley, Mitch McConnell, Wayne Allard, Phil Gramm, John Ashcroft.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of H.R. 2646, the Education Savings Act for Public and Private Schools, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota (Mr. CONRAD) and the Senator from Hawaii (Mr. INOUE) are necessarily absent.

The result was announced—yeas 74, nays 24, as follows:

[Rollcall Vote No. 34 Leg.]

YEAS—74

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|----------|-----------|-----------|
| Abraham | Brownback | Cochran |
| Allard | Bryan | Collins |
| Ashcroft | Bumpers | Coverdell |
| Bennett | Burns | Craig |
| Biden | Byrd | D'Amato |
| Bond | Campbell | Daschle |
| Boxer | Chafee | DeWine |
| Breaux | Coats | Dodd |

| | | |
|------------|------------|-------------|
| Domenici | Inhofe | Roberts |
| Dorgan | Jeffords | Rockefeller |
| Enzi | Johnson | Roth |
| Faircloth | Kempthorne | Santorum |
| Feinstein | Kerry | Sessions |
| Frist | Kyl | Shelby |
| Gorton | Leahy | Smith (NH) |
| Graham | Lieberman | Smith (OR) |
| Gramm | Lott | Snowe |
| Grams | Lugar | Specter |
| Grassley | Mack | Stevens |
| Gregg | McCain | Thomas |
| Hagel | McConnell | Thompson |
| Hatch | Moynihan | Thurmond |
| Helms | Murkowski | Torricelli |
| Hutchinson | Nickles | Warner |
| Hutchison | Robb | |

NAYS—24

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|----------|------------|---------------|
| Akaka | Harkin | Mikulski |
| Baucus | Hollings | Moseley-Braun |
| Bingaman | Kennedy | Murray |
| Cleland | Kerrey | Reed |
| Durbin | Kohl | Reid |
| Feingold | Landrieu | Sarbanes |
| Ford | Lautenberg | Wellstone |
| Glenn | Levin | Wyden |

NOT VOTING—2

| | |
|--------|--------|
| Conrad | Inouye |
|--------|--------|

The PRESIDING OFFICER. On this vote, the yeas are 74, the nays are 24. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. KOHL. Mr. President, my vote in opposition to the motion to proceed to H.R. 2646 was unrelated to the merits of this education IRA proposal. I voted with Senator DURBIN on this procedural issue to protest the lack of floor action on two noncontroversial judicial nominees from Illinois.

While the Senate should consider how to make quality education more affordable, it also should not neglect its duty to fill judicial vacancies. The Senate's failure to act on these nominees is particularly egregious—one of these positions has been vacant for five years, and the other has been vacant for almost three and a half years. There are currently 82 judicial vacancies, and continued inaction and delay in the Senate is likely to compromise the quality of justice available to crime victims and other injured persons throughout the U.S.

NOMINATION OF JUSTICE SUSAN GRABER TO THE U.S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Mr. SMITH of Oregon. Mr. President, today we have an opportunity to confirm the nomination of an outstanding judicial nominee to the U.S. Circuit Court of Appeals for the Ninth Circuit. The fact that Susan Graber is scheduled today for a floor vote is a great honor, but one that does not surprise me. Justice Graber has earned an excellent reputation among her colleagues on the Oregon Supreme Court and throughout the Oregon Bar. She has earned this outstanding reputation not only because of her legal scholarship, but also because of the high professional standards she has consistently displayed in her advocacy in private practice and during the years she has served on the bench. I am confident that Justice Susan Graber will bring to

the Ninth Circuit Court of Appeals the same dedication, professionalism, and integrity that has been the hallmark of her legal career.

Mr. President, I urge my colleagues to join me in support of this outstanding judicial nominee.

NOMINATION OF SUSAN GRABER

Mr. WYDEN. Mr. President, I rise today to speak in support of a friend and a constituent of mine who is a great legal thinker and writer, a pillar in her community, a respected and valuable Associate Justice on the Oregon Supreme Court, and someone who I believe will be an outstanding federal court of appeals judge—Justice Susan Graber.

Let me begin by expressing my thanks and gratitude to the Senate Judiciary Committee, and in particular the Chairman of that Committee, Senator HATCH of Utah for acting on the nomination of Justice Graber and holding a confirmation hearing earlier this year.

Mr. President, I rise today in strong support of Justice Susan Graber for appointment as a judge on the United States Court of Appeals for the Ninth Circuit. Justice Graber comes before the Senate today with the strong bipartisan support of the Oregon Congressional delegation, with broad support from Oregon's law enforcement community and with strong support from the bench and bar. From all across my home state, from both sides of the aisle in Oregon politics, from judges and litigants alike, I have heard the praise accorded to this dedicated jurist, who has just recently reached her 10th anniversary as an appellate judge—at the ripe old age of 48.

I will not dwell long on her outstanding qualifications for this position—a graduate of Wellesley College and Yale Law School, Susan Graber has excelled at every step of her fine legal career. From the moment she took the bench right up until the present day, Susan Graber remains the youngest—and I think most will agree, one of the most productive—justices of the Oregon Supreme Court.

Through her authorship of over 300 opinions in the past 10 years, Justice Graber has garnered praise from the bench and bar as being the epitome of a careful and non-ideological judge whose centrist approach has helped promote a consensus-building and collegial atmosphere on this important court. And Justice Graber's opinions point out another fact—this is an individual who respects and understands her role as a judge. She understands very clearly the difference between being a legislator and being a judge, and her opinions reflect a firm adherence to the law as written by the Oregon Legislature. She knows the role of a judge is to follow, not to make the law, and that is exactly what we need on the federal appellate bench.

I am certain that Justice Graber will bring to the U.S. Court of Appeals the